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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 287

**Introduced by Assembly Members Gordon, Eggman, and
Mark Stone
(Principal coauthor: Assembly Member Wilk)
(Coauthors: Assembly Members Dababneh, ~~Dodd~~, Jones, and
Lackey)**

February 11, 2015

An act to amend Sections ~~3050, 3066, 4451, and 11713.3~~ of, to add Section ~~3065.2~~ to, *3065 and 11713.18* of, and to add Article 1.1 (commencing with Section 11750) to Chapter 4 of Division 5 of, the Vehicle Code, relating to vehicle safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 287, as amended, Gordon. Vehicle safety: recalls.

Existing law generally regulates the transfer and registration of motor vehicles. Existing federal law requires a motor vehicle manufacturer to notify the owner or purchaser of a motor vehicle when the manufacturer determines that the vehicle contains a safety-related defect or when the manufacturer is ordered by the federal Secretary of Transportation to notify vehicle owners and purchasers that a vehicle has a safety-related defect. Existing federal law also prohibits a motor vehicle dealer from selling a vehicle if it has been notified of a safety-related defect by the

manufacturer, except as specified. *A violation of the Vehicle Code is a crime.*

~~This bill would enact the Consumer Automotive Recall Safety Act, which would be operative on and after July 1, 2016. The act would require a vehicle manufacturer to display notifications of Stop Sale — Stop Drive recalls, as defined, on the manufacturer's Internet Web site. The act would require a vehicle manufacturer to provide a rental or loaner car for a consumer who seeks to have a vehicle repaired because of a recall but the parts or procedures are not yet available to perform the repair. The act would also require a vehicle manufacturer to compensate its franchisees, as specified, for costs incurred in providing a loaner or rental car and storing a consumer's vehicle that is subject to recall if the parts or procedures are not yet available to perform the repair.~~

~~The act would prohibit a vehicle dealer from displaying or offering for sale at retail a used vehicle, unless the dealer has obtained a recall database report within 30 days of the display or offer. The act would prohibit a vehicle dealer from selling or leasing a vehicle at retail if the used vehicle is subject to a Stop Sale — Stop Drive recall, until the recalled vehicle has been repaired, subject to exception. The act would prohibit a rental car company from renting a vehicle that is subject to a recall, until the recalled vehicle has been repaired, as specified. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.~~

~~Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee in regard to a dispute with the vehicle manufacturer.~~

~~This bill would, commencing July 1, 2016, authorize the board to hear and decide protests by franchisees regarding payments for providing a loaner or rental car and storing a consumer's vehicle subject to recall if the parts or procedures are not yet available to perform the repair. The bill would make additional conforming changes.~~

~~Existing law requires the Department of Motor Vehicles to issue a certificate of ownership to the legal owner of a vehicle upon registering a vehicle, and requires the certificate of ownership to contain specified information, including the information required upon the face of the registration card.~~

~~This bill would additionally require the certificate of ownership to contain a provision for a recall disclosure statement, as specified.~~

~~Under existing law, a vehicle manufacturer, manufacturer branch, distributor, and distributor branch are prohibited from engaging in specified practices. Existing law makes a violation of these prohibitions a crime.~~

~~This bill would, commencing July 1, 2016, include within those prohibited practices, unfairly discriminating among franchisees with respect to reimbursement for costs incurred in providing a loaner or rental car and storing a consumer's vehicle that is subject to recall if the parts or procedures are not yet available to perform the repair. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

This bill would enact the Consumer Automotive Recall Safety Act, which would become operative on July 1, 2017. The act would prohibit a dealer or rental car company, as defined, from loaning, renting, or offering for loan or rent a vehicle subject to a manufacturer's recall after receiving a notice of the recall, as specified, until the vehicle has been repaired, except as specified. The act would require a dealer to obtain a recall database report, as defined, within 30 days of displaying or offering for sale a used vehicle advertised as "certified," or any similar descriptive term, that implies the vehicle has been certified to meet the terms of a used vehicle certification program. If a recall database report indicates that the used vehicle is subject to a manufacturer's recall, the act would prohibit a dealer from advertising or selling the vehicle as "certified" or any similar descriptive term until the recall repair has been made. The act would also require the Department of Motor Vehicles to obtain a recall database report before mailing a notice of registration renewal to the registered owner of a vehicle and, if the recall database report indicates the vehicle is subject to a manufacturer's recall, to include a specified recall disclosure statement with the notice of registration renewal. This requirement would not take effect until the Director of Motor Vehicles executes a declaration, as specified, certifying that the department has appropriate access to the necessary data within a recall database and available funding to include the recall disclosure statement. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.

Existing law requires a vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate

each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing.

This bill would specify that the warranty obligations include all costs associated with the disposal of hazardous materials that are associated with a recall. The bill would provide, for purposes of the above-described warranty obligations, that a warranty includes a recall conducted pursuant to federal motor vehicle safety laws. The bill would state that this provision is declaratory of existing law.

Existing law makes it a violation of the Vehicle Code for the holder of a dealer’s license to advertise for sale or sell a used vehicle as “certified” if, among other things, the dealer knows the odometer on the vehicle does not indicate actual mileage, the dealer knows the vehicle has sustained frame damage, or the dealer fails to provide the buyer with a completed inspection report indicating all the components inspected prior to sale.

This bill would additionally make it a violation of the Vehicle Code for the holder of a dealer’s license to advertise for sale or sell a used vehicle as “certified” if the vehicle is subject to an unremedied manufacturer’s recall described in a recall database report.

The bill would state findings and declarations of the Legislature relative to vehicle recalls.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Over the past one-half decade, automakers and the National
- 4 Highway Traffic Safety Administration have issued more recalls
- 5 on new and used motor vehicles than ever before. The year 2014
- 6 set the record for the most recalls on vehicles in United States
- 7 history with over 63.8 million vehicles recalled. The rate of vehicle
- 8 recalls has exponentially grown over this past one-half decade as

1 51 million recalls were issued in 2015, 22 million recalls were
2 issued in ~~2013~~ 2013, and 16.2 million were issued in 2012. The
3 increase of recalls in 2014 is a 190 percent increase from 2013 and
4 a 293.8 percent increase from 2012.

5 (2) While federal motor vehicle safety standards are more
6 demanding now than at any other point in time and new vehicles
7 sold today are the safest in history, the exponential growth of
8 recalls issued on motor vehicles has caused confusion and apathy
9 for far too many Californians. According to the National Highway
10 Traffic Safety Administration and others, about one-third of all
11 recalled vehicles are never repaired by the vehicle's owner.

12 (3) Federal regulations now require most vehicle manufacturers
13 to provide motor vehicle safety recall information applicable to
14 the vehicles they manufacture on the Internet and to the public.
15 ~~Dealers, rental car companies, and private parties offering vehicles~~
16 ~~for sale or rent now have greater access to recall information than~~
17 ~~ever before.~~

18 ~~(4) Federal law imposes a requirement not to sell a new vehicle~~
19 ~~subject to a recall, but neither federal nor California law addresses~~
20 ~~used vehicles subject to a recall. It is the intent of this act to address~~
21 ~~used vehicles subject to a recall that are not yet repaired.~~

22 (b) Accordingly, it is the intent of the Legislature in enacting
23 this act to increase consumer awareness of ~~recalls in the car~~
24 ~~purchasing and rental process, unrepaired recalls on their cars,~~
25 to ensure that consumers have access to loaner and rental vehicles
26 ~~while their recalled vehicles are being repaired at a new motor~~
27 ~~vehicle dealer, and to ensure that a recalled vehicle that poses a~~
28 ~~risk of imminent harm is not sold or rented to Californians until~~
29 ~~the risk is removed and the vehicle is repaired. free of any~~
30 ~~unrepaired recalls, and to safeguard the advertising of "certified"~~
31 ~~used cars.~~

32 (c) The Legislature further finds and declares all of the
33 following:

34 (1) The distribution, sale, and service of new motor vehicles in
35 the State of California vitally ~~affects~~ *affect* the general economy
36 of this state and the public welfare.

37 (2) The new motor vehicle franchise system, which operates
38 within a strictly defined and highly regulated statutory scheme,
39 assures the consuming public of a well-organized distribution
40 system for the availability and sale of new motor vehicles

1 throughout the state, provides a network of quality warranty, recall,
 2 and repair facilities to maintain those vehicles, and creates a
 3 cost-effective method for the state to police those systems through
 4 the licensing and regulation of private sector franchisors and
 5 franchisees.

6 ~~(3) Franchisors sometimes establish programs to reimburse~~
 7 ~~franchisees for loaner or rental cars given to consumers whose~~
 8 ~~vehicles have been recalled, but California franchise laws fail to~~
 9 ~~establish guidelines for rental or loaner vehicle reimbursement.~~

10 ~~(4)~~
 11 (3) California franchise laws require manufacturers to provide
 12 reasonable reimbursement to dealers for warranty and recall work,
 13 but ~~fails fail~~ to establish guidelines for compensating franchisee
 14 costs associated with recalled vehicles that cannot be repaired and
 15 remain in the franchisee’s possession. *disposal costs associated*
 16 *with hazardous waste generated by repairs on recalled vehicles.*

17 (d) Accordingly, it is the intent of the Legislature in enacting
 18 this act to ensure that new motor vehicle dealer franchisees are
 19 treated fairly by their franchisors, ~~that new motor vehicle dealer~~
 20 ~~franchisees are reasonably reimbursed for providing loaner or~~
 21 ~~rental vehicles to consumers who have recalled vehicles when the~~
 22 ~~parts or procedures to make the recall repair are not available, and~~
 23 ~~that new motor vehicle dealer franchisees are reasonably~~
 24 ~~compensated for recalled vehicles at their dealerships that cannot~~
 25 ~~immediately be repaired and must be stored by the franchisee at~~
 26 ~~the dealership. franchisors and that new motor vehicle dealer~~
 27 ~~franchisees are reasonably compensated for repairs on recalled~~
 28 ~~vehicles.~~

29 SEC. 2. Section 3050 of the Vehicle Code is amended to read:
 30 3050. The board shall do all of the following:

31 (a) ~~Adopt rules and regulations in accordance with Chapter 3.5~~
 32 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
 33 ~~2 of the Government Code governing those matters that are~~
 34 ~~specifically committed to its jurisdiction.~~

35 (b) ~~Hear and determine, within the limitations and in accordance~~
 36 ~~with the procedure provided, an appeal presented by an applicant~~
 37 ~~for, or holder of, a license as a new motor vehicle dealer,~~
 38 ~~manufacturer, manufacturer branch, distributor, distributor branch,~~
 39 ~~or representative when the applicant or licensee submits an appeal~~

1 provided for in this chapter from a decision arising out of the
2 department.

3 ~~(e) Consider any matter concerning the activities or practices~~
4 ~~of any person applying for or holding a license as a new motor~~
5 ~~vehicle dealer, manufacturer, manufacturer branch, distributor,~~
6 ~~distributor branch, or representative pursuant to Chapter 4~~
7 ~~(commencing with Section 11700) of Division 5 submitted by any~~
8 ~~person. A member of the board who is a new motor vehicle dealer~~
9 ~~may not participate in, hear, comment, advise other members upon,~~
10 ~~or decide any matter considered by the board pursuant to this~~
11 ~~subdivision that involves a dispute between a franchisee and~~
12 ~~franchisor. After that consideration, the board may do any one or~~
13 ~~any combination of the following:~~

14 ~~(1) Direct the department to conduct investigation of matters~~
15 ~~that the board deems reasonable, and make a written report on the~~
16 ~~results of the investigation to the board within the time specified~~
17 ~~by the board.~~

18 ~~(2) Undertake to mediate, arbitrate, or otherwise resolve any~~
19 ~~honest difference of opinion or viewpoint existing between any~~
20 ~~member of the public and any new motor vehicle dealer,~~
21 ~~manufacturer, manufacturer branch, distributor, distributor branch,~~
22 ~~or representative.~~

23 ~~(3) Order the department to exercise any and all authority or~~
24 ~~power that the department may have with respect to the issuance,~~
25 ~~renewal, refusal to renew, suspension, or revocation of the license~~
26 ~~of any new motor vehicle dealer, manufacturer, manufacturer~~
27 ~~branch, distributor, distributor branch, or representative as that~~
28 ~~license is required under Chapter 4 (commencing with Section~~
29 ~~11700) of Division 5.~~

30 ~~(d) Hear and decide, within the limitations and in accordance~~
31 ~~with the procedure provided, a protest presented by a franchisee~~
32 ~~pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.2, 3070,~~
33 ~~3072, 3074, 3075, or 3076. A member of the board who is a new~~
34 ~~motor vehicle dealer may not participate in, hear, comment, advise~~
35 ~~other members upon, or decide, any matter involving a protest~~
36 ~~filed pursuant to Article 4 (commencing with Section 3060), unless~~
37 ~~all parties to the protest stipulate otherwise.~~

38 ~~(e) Notwithstanding subdivisions (c) and (d), the courts have~~
39 ~~jurisdiction over all common law and statutory claims originally~~

1 cognizable in the courts. For those claims, a party may initiate an
2 action directly in any court of competent jurisdiction.

3 SEC. 3. Section 3065.2 is added to the Vehicle Code, to read:

4 3065.2. (a) A claim made by a franchisee for payment under
5 Section 11760 shall be either approved or disapproved within 30
6 days after receipt by the franchisor. When a claim is disapproved,
7 the franchisee who submits it shall be notified in writing of its
8 disapproval within the required period, and each notice shall state
9 the specific grounds upon which the disapproval is based. Any
10 claim not specifically disapproved in writing within 30 days from
11 receipt shall be deemed approved on the 30th day.

12 (b) ~~Franchisee claims for compensation under Section 11760~~
13 ~~shall not be disapproved unless the claim is false or fraudulent,~~
14 ~~the claim is ineligible under the statute, or for material~~
15 ~~noncompliance with reasonable and nondiscriminatory~~
16 ~~requirements of the franchisor, including documentation and~~
17 ~~administrative claims submission requirements.~~

18 (c) ~~The franchisor shall provide a reasonable appeal process~~
19 ~~allowing the franchisee at least 30 days after receipt of the written~~
20 ~~disapproval notice to respond to any disapproval with additional~~
21 ~~supporting documentation or information rebutting the disapproval.~~
22 ~~If disapproval is based upon noncompliance with documentation~~
23 ~~or administrative claims submission requirements, the franchisor~~
24 ~~shall allow the franchisee at least 30 days from the date of receipt~~
25 ~~of the written disapproval notice to cure any material~~
26 ~~noncompliance. If the disapproval is rebutted, and material~~
27 ~~noncompliance is cured before the applicable deadline, the~~
28 ~~franchisor shall approve the claim.~~

29 (d) ~~If the franchisee provides additional supporting~~
30 ~~documentation or information purporting to rebut the disapproval,~~
31 ~~attempts to cure noncompliance relating to the claim, or otherwise~~
32 ~~appeals denial of the claim, and the franchisor continues to deny~~
33 ~~the claim, the franchisor shall provide the franchisee with a written~~
34 ~~notification of the final denial within 30 days of completion of the~~
35 ~~appeal process, which shall conspicuously state "Final Denial" on~~
36 ~~the first page.~~

37 (e) ~~Following the disapproval of a claim, a franchisee shall have~~
38 ~~six months from receipt of the written notice described in either~~
39 ~~subdivision (a) or (d), whichever is later, to file a protest with the~~
40 ~~board for determination of whether the franchisor complied with~~

1 subdivisions (a), (b), (c), and (d). In any hearing pursuant to this
2 subdivision or subdivision (a), (b), (c), or (d), the franchisor shall
3 have the burden of proof.

4 (f) A claim made by franchisees under this section shall be paid
5 within 30 days following approval. Failure to approve or pay within
6 the time limits specified in this section, in individual instances for
7 reasons beyond the reasonable control of the franchisor, is not a
8 violation of this section.

9 (g) (1) Audits of franchisee records for payment under Section
10 11760 may be conducted by the franchisor on a reasonable basis,
11 and for a period of nine months after a claim is paid or credit
12 issued. A franchisor shall not select a franchisee for an audit, or
13 perform an audit, in a punitive, retaliatory, or unfairly
14 discriminatory manner. A franchisor may conduct no more than
15 one random audit of a franchisee in a nine-month period. The
16 franchisor's notification to the franchisee of any additional audit
17 within a nine-month period shall be accompanied by written
18 disclosure of the basis for that additional audit.

19 (2) Previously approved claims shall not be disapproved and
20 charged back unless the claim is false or fraudulent, the claim is
21 ineligible under the statute, or for material noncompliance with
22 reasonable and nondiscriminatory requirements of the franchisor,
23 including documentation and administrative claims submission
24 requirements. A franchisor shall not disapprove a claim or
25 chargeback a claim based upon an extrapolation from a sample of
26 claims, unless the sample of claims is selected randomly and the
27 extrapolation is performed in a reasonable and statistically valid
28 manner.

29 (3) If the franchisor disapproves of a previously approved claim
30 following an audit, the franchisor shall provide to the franchisee,
31 within 30 days after the audit, a written disapproval notice stating
32 the specific grounds upon which the claim is disapproved. The
33 franchisor shall provide a reasonable appeal process allowing the
34 franchisee a reasonable period of not less than 30 days after receipt
35 of the written disapproval notice to respond to any disapproval
36 with additional supporting documentation or information rebutting
37 the disapproval and to cure any material noncompliance, with the
38 period to be commensurate with the volume of claims under
39 consideration. If the franchisee rebuts any disapproval and cures
40 any material noncompliance relating to a claim before the

1 applicable deadline, the franchisor shall not chargeback the
2 franchisee for that claim.

3 (4) If the franchisee provides additional supporting
4 documentation or information purporting to rebut the disapproval,
5 attempts to cure noncompliance relating to the claim, or otherwise
6 appeals denial of the claim, and the franchisor continues to deny
7 the claim, the franchisor shall provide the franchisee with a written
8 notification of the final denial within 30 days of completion of the
9 appeal process, which shall conspicuously state “Final Denial” on
10 the first page.

11 (5) The franchisor shall not chargeback the franchisee until 45
12 days after the franchisee receives the written notice described in
13 paragraph (3) or (4), whichever is later. If the franchisee cures any
14 material noncompliance relating to a claim, the franchisor shall
15 not chargeback the dealer for that claim. Any chargeback to a
16 franchisee under Section 11760 shall be made within 90 days after
17 the franchisee receives that written notice. If the board sustains
18 the chargeback or the protest is dismissed, the franchisor shall
19 have 90 days following issuance of the final order or the dismissal
20 to make the chargeback, unless otherwise provided in a settlement
21 agreement.

22 (6) Within six months after receipt of the written notice
23 described in either paragraph (3) or (4), a franchisee may file a
24 protest with the board for determination of whether the franchisor
25 complied with this subdivision. If the franchisee files a protest
26 pursuant to this subdivision prior to the franchisor’s chargeback
27 for denied claims, the franchisor shall not offset or otherwise
28 undertake to collect the chargeback until the board issues a final
29 order on the protest. In any protest pursuant to this subdivision,
30 the franchisor shall have the burden of proof.

31 (h) If a false claim was submitted by a franchisee with the intent
32 to defraud the franchisor, a longer period for audit and any resulting
33 chargeback may be permitted if the franchisor obtains an order
34 from the board.

35 (i) This section shall become operative on July 1, 2016.

36 SEC. 4. Section 3066 of the Vehicle Code is amended to read:

37 3066. (a) Upon receiving a protest pursuant to Section 3060,
38 3062, 3064, 3065, 3065.1, 3065.2, 3070, 3072, 3074, 3075, or
39 3076, the board shall fix a time within 60 days of the order, and
40 place of hearing, and shall send by registered mail a copy of the

1 order to the franchisor, the protesting franchisee, and all individuals
2 and groups that have requested notification by the board of protests
3 and decisions of the board. Except in a case involving a franchisee
4 who deals exclusively in motorcycles, the board or its executive
5 director may, upon a showing of good cause, accelerate or postpone
6 the date initially established for a hearing, but the hearing may not
7 be rescheduled more than 90 days after the board's initial order.
8 For the purpose of accelerating or postponing a hearing date, "good
9 cause" includes, but is not limited to, the effects upon, and any
10 irreparable harm to, the parties or interested persons or groups if
11 the request for a change in hearing date is not granted. The board
12 or an administrative law judge designated by the board shall hear
13 and consider the oral and documented evidence introduced by the
14 parties and other interested individuals and groups, and the board
15 shall make its decision solely on the record so made. Chapter 4.5
16 (commencing with Section 11400) of Part 1 of Division 3 of Title
17 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7,
18 11511, 11511.5, 11513, 11514, 11515, and 11517 of the
19 Government Code apply to these proceedings.

20 (b) In a hearing on a protest filed pursuant to Section 3060,
21 3062, 3070, or 3072, the franchisor shall have the burden of proof
22 to establish that there is good cause to modify, replace, terminate,
23 or refuse to continue a franchise. The franchisee shall have the
24 burden of proof to establish that there is good cause not to enter
25 into a franchise establishing or relocating an additional motor
26 vehicle dealership.

27 (c) Except as otherwise provided in this chapter, in a hearing
28 on a protest alleging a violation of, or filed pursuant to, Section
29 3064, 3065, 3065.1, 3065.2, 3074, 3075, or 3076, the franchisee
30 shall have the burden of proof, but the franchisor has the burden
31 of proof to establish that a franchisee acted with intent to defraud
32 the franchisor when that issue is material to a protest filed pursuant
33 to Section 3065, 3065.1, 3065.2, 3075, or 3076.

34 (d) A member of the board who is a new motor vehicle dealer
35 may not participate in, hear, comment, or advise other members
36 upon, or decide, a matter involving a protest filed pursuant to this
37 article unless all parties to the protest stipulate otherwise.

38 SEC. 5. Section 4451 of the Vehicle Code is amended to read:

39 4451. (a) The certificate of ownership shall contain all of the
40 following:

- 1 ~~(1) Not less than the information required upon the face of the~~
 2 ~~registration card.~~
- 3 ~~(2) Provision for notice to the department of a transfer of the~~
 4 ~~title or interest of the owner or legal owner.~~
- 5 ~~(3) Provision for application for transfer of registration by the~~
 6 ~~transferee.~~
- 7 ~~(4) Provision for an odometer disclosure statement pursuant to~~
 8 ~~subsection (a) of Section 32705 of Title 49 of the United States~~
 9 ~~Code.~~
- 10 ~~(5) Commencing July 1, 2016, or as soon thereafter as the~~
 11 ~~department exhausts its supply of existing certificate of ownership~~
 12 ~~forms, provision for a recall disclosure statement pursuant to~~
 13 ~~Section 11758.~~
- 14 ~~(b) Notwithstanding paragraph (5) of subdivision (a), a~~
 15 ~~certificate of ownership previously issued by the department prior~~
 16 ~~to July 1, 2016, and in the possession of a registered owner remains~~
 17 ~~valid for the transfer of registration of a vehicle.~~
- 18 ~~SEC. 6. Section 11713.3 of the Vehicle Code is amended to~~
 19 ~~read:~~
- 20 ~~11713.3. It is unlawful and a violation of this code for a~~
 21 ~~manufacturer, manufacturer branch, distributor, or distributor~~
 22 ~~branch licensed pursuant to this code to do, directly or indirectly~~
 23 ~~through an affiliate, any of the following:~~
- 24 ~~(a) To refuse or fail to deliver in reasonable quantities and within~~
 25 ~~a reasonable time after receipt of an order from a dealer having a~~
 26 ~~franchise for the retail sale of a new vehicle sold or distributed by~~
 27 ~~the manufacturer or distributor, a new vehicle or parts or~~
 28 ~~accessories to new vehicles as are covered by the franchise, if the~~
 29 ~~vehicle, parts, or accessories are publicly advertised as being~~
 30 ~~available for delivery or actually being delivered. This subdivision~~
 31 ~~is not violated, however, if the failure is caused by acts or causes~~
 32 ~~beyond the control of the manufacturer, manufacturer branch,~~
 33 ~~distributor, or distributor branch.~~
- 34 ~~(b) To prevent or require, or attempt to prevent or require, by~~
 35 ~~contract or otherwise, a change in the capital structure of a~~
 36 ~~dealership or the means by or through which the dealer finances~~
 37 ~~the operation of the dealership, if the dealer at all times meets~~
 38 ~~reasonable capital standards agreed to by the dealer and the~~
 39 ~~manufacturer or distributor, and if a change in capital structure~~
 40 ~~does not cause a change in the principal management or have the~~

1 ~~effect of a sale of the franchise without the consent of the~~
2 ~~manufacturer or distributor.~~

3 ~~(e) To prevent or require, or attempt to prevent or require, a~~
4 ~~dealer to change the executive management of a dealership, other~~
5 ~~than the principal dealership operator or operators, if the franchise~~
6 ~~was granted to the dealer in reliance upon the personal~~
7 ~~qualifications of that person.~~

8 ~~(d) (1) Except as provided in subdivision (t), to prevent or~~
9 ~~require, or attempt to prevent or require, by contract or otherwise,~~
10 ~~a dealer, or an officer, partner, or stockholder of a dealership, the~~
11 ~~sale or transfer of a part of the interest of any of them to another~~
12 ~~person. A dealer, officer, partner, or stockholder shall not, however,~~
13 ~~have the right to sell, transfer, or assign the franchise, or a right~~
14 ~~thereunder, without the consent of the manufacturer or distributor~~
15 ~~except that the consent shall not be unreasonably withheld.~~

16 ~~(2) (A) For the transferring franchisee to fail, prior to the sale,~~
17 ~~transfer, or assignment of a franchisee or the sale, assignment, or~~
18 ~~transfer of all, or substantially all, of the assets of the franchised~~
19 ~~business or a controlling interest in the franchised business to~~
20 ~~another person, to notify the manufacturer or distributor of the~~
21 ~~franchisee's decision to sell, transfer, or assign the franchise. The~~
22 ~~notice shall be in writing and shall include all of the following:~~

- 23 ~~(i) The proposed transferee's name and address.~~
- 24 ~~(ii) A copy of all of the agreements relating to the sale,~~
25 ~~assignment, or transfer of the franchised business or its assets.~~
- 26 ~~(iii) The proposed transferee's application for approval to~~
27 ~~become the successor franchisee. The application shall include~~
28 ~~forms and related information generally utilized by the~~
29 ~~manufacturer or distributor in reviewing prospective franchisees,~~
30 ~~if those forms are readily made available to existing franchisees.~~
31 ~~As soon as practicable after receipt of the proposed transferee's~~
32 ~~application, the manufacturer or distributor shall notify the~~
33 ~~franchisee and the proposed transferee of information needed to~~
34 ~~make the application complete.~~

35 ~~(B) For the manufacturer or distributor, to fail, on or before 60~~
36 ~~days after the receipt of all of the information required pursuant~~
37 ~~to subparagraph (A), or as extended by a written agreement~~
38 ~~between the manufacturer or distributor and the franchisee, to~~
39 ~~notify the franchisee of the approval or the disapproval of the sale,~~
40 ~~transfer, or assignment of the franchise. The notice shall be in~~

1 writing and shall be personally served or sent by certified mail,
2 return receipt requested, or by guaranteed overnight delivery
3 service that provides verification of delivery and shall be directed
4 to the franchisee. A proposed sale, assignment, or transfer shall
5 be deemed approved, unless disapproved by the franchisor in the
6 manner provided by this subdivision. If the proposed sale,
7 assignment, or transfer is disapproved, the franchisor shall include
8 in the notice of disapproval a statement setting forth the reasons
9 for the disapproval.

10 (3) In an action in which the manufacturer's or distributor's
11 withholding of consent under this subdivision or subdivision (c)
12 is an issue, whether the withholding of consent was unreasonable
13 is a question of fact requiring consideration of all the existing
14 circumstances.

15 (e) To prevent, or attempt to prevent, a dealer from receiving
16 fair and reasonable compensation for the value of the franchised
17 business. There shall not be a transfer or assignment of the dealer's
18 franchise without the consent of the manufacturer or distributor,
19 which consent shall not be unreasonably withheld or conditioned
20 upon the release, assignment, novation, waiver, estoppel, or
21 modification of a claim or defense by the dealer.

22 (f) To obtain money, goods, services, or another benefit from
23 a person with whom the dealer does business, on account of, or in
24 relation to, the transaction between the dealer and that other person,
25 other than for compensation for services rendered, unless the
26 benefit is promptly accounted for, and transmitted to, the dealer.

27 (g) (1) Except as provided in paragraph (3), to obtain from a
28 dealer or enforce against a dealer an agreement, provision, release,
29 assignment, novation, waiver, or estoppel that does any of the
30 following:

31 (A) Modifies or disclaims a duty or obligation of a manufacturer,
32 manufacturer branch, distributor, distributor branch, or
33 representative, or a right or privilege of a dealer, pursuant to
34 Chapter 4 (commencing with Section 11700) of Division 5 or
35 Chapter 6 (commencing with Section 3000) of Division 2.

36 (B) Limits or constrains the right of a dealer to file, pursue, or
37 submit evidence in connection with a protest before the board.

38 (C) Requires a dealer to terminate a franchise.

39 (D) Requires a controversy between a manufacturer,
40 manufacturer branch, distributor, distributor branch, or

1 representative and a dealer to be referred to a person for a binding
2 determination. However, this subparagraph does not prohibit
3 arbitration before an independent arbitrator, provided that whenever
4 a motor vehicle franchise contract provides for the use of arbitration
5 to resolve a controversy arising out of, or relating to, that contract,
6 arbitration may be used to settle the controversy only if, after the
7 controversy arises, all parties to the controversy consent in writing
8 to use arbitration to settle the controversy. For the purpose of this
9 subparagraph, the terms “motor vehicle” and “motor vehicle
10 franchise contract” shall have the same meaning as defined in
11 Section 1226 of Title 15 of the United States Code. If arbitration
12 is elected to settle a dispute under a motor vehicle franchise
13 contract, the arbitrator shall provide the parties to the arbitration
14 with a written explanation of the factual and legal basis for the
15 award.

16 (2) An agreement, provision, release, assignment, novation,
17 waiver, or estoppel prohibited by this subdivision shall be
18 unenforceable and void.

19 (3) This subdivision does not do any of the following:

20 (A) Limit or restrict the terms upon which parties to a protest
21 before the board, civil action, or other proceeding can settle or
22 resolve, or stipulate to evidentiary or procedural matters during
23 the course of, a protest, civil action, or other proceeding.

24 (B) Affect the enforceability of any stipulated order or other
25 order entered by the board.

26 (C) Affect the enforceability of any provision in a contract if
27 the provision is not prohibited under this subdivision or any other
28 law.

29 (D) Affect the enforceability of a provision in any contract
30 entered into on or before December 31, 2011.

31 (E) Prohibit a dealer from waiving its right to file a protest
32 pursuant to Section 3065.1 if the waiver agreement is entered into
33 after a franchisor incentive program claim has been disapproved
34 by the franchisor and the waiver is voluntarily given as part of an
35 agreement to settle that claim.

36 (F) Prohibit a voluntary agreement supported by valuable
37 consideration, other than granting or renewing a franchise, that
38 does both of the following:

39 (i) Provides that a dealer establish or maintain exclusive
40 facilities, personnel, or display space or provides that a dealer

1 make a material alteration, expansion, or addition to a dealership
2 facility.

3 ~~(ii) Contains no waiver or other provision prohibited by~~
4 ~~subparagraph (A), (B), (C), or (D) of paragraph (1).~~

5 ~~(G) Prohibit an agreement separate from the franchise agreement~~
6 ~~that implements a dealer's election to terminate the franchise if~~
7 ~~the agreement is conditioned only on a specified time for~~
8 ~~termination or payment of consideration to the dealer.~~

9 ~~(H) (i) Prohibit a voluntary waiver agreement, supported by~~
10 ~~valuable consideration, other than the consideration of renewing~~
11 ~~a franchise, to waive the right of a dealer to file a protest under~~
12 ~~Section 3062 for the proposed establishment or relocation of a~~
13 ~~specific proposed dealership, if the waiver agreement provides all~~
14 ~~of the following:~~

15 ~~(I) The approximate address at which the proposed dealership~~
16 ~~will be located.~~

17 ~~(II) The planning potential used to establish the proposed~~
18 ~~dealership's facility, personnel, and capital requirements.~~

19 ~~(III) An approximation of projected vehicle and parts sales, and~~
20 ~~number of vehicles to be serviced at the proposed dealership.~~

21 ~~(IV) Whether the franchisor or affiliate will hold an ownership~~
22 ~~interest in the proposed dealership or real property of the proposed~~
23 ~~dealership, and the approximate percentage of any franchisor or~~
24 ~~affiliate ownership interest in the proposed dealership.~~

25 ~~(V) The line makes to be operated at the proposed dealership.~~

26 ~~(VI) If known at the time the waiver agreement is executed, the~~
27 ~~identity of the dealer who will operate the proposed dealership.~~

28 ~~(VII) The date the waiver agreement is to expire, which may~~
29 ~~not be more than 30 months after the date of execution of the~~
30 ~~waiver agreement.~~

31 ~~(ii) Notwithstanding the provisions of a waiver agreement~~
32 ~~entered into pursuant to the provisions of this subparagraph, a~~
33 ~~dealer may file a protest under Section 3062 if any of the~~
34 ~~information provided pursuant to clause (i) has become materially~~
35 ~~inaccurate since the waiver agreement was executed. Any~~
36 ~~determination of the enforceability of a waiver agreement shall be~~
37 ~~determined by the board and the franchisor shall have the burden~~
38 ~~of proof.~~

39 ~~(h) To increase prices of motor vehicles that the dealer had~~
40 ~~ordered for private retail consumers prior to the dealer's receipt~~

1 of the written official price increase notification. A sales contract
2 signed by a private retail consumer is evidence of the order. In the
3 event of manufacturer price reductions, the amount of the reduction
4 received by a dealer shall be passed on to the private retail
5 consumer by the dealer if the retail price was negotiated on the
6 basis of the previous higher price to the dealer. Price reductions
7 apply to all vehicles in the dealer's inventory that were subject to
8 the price reduction. Price differences applicable to new model or
9 series motor vehicles at the time of the introduction of new models
10 or series shall not be considered a price increase or price decrease.
11 This subdivision does not apply to price changes caused by either
12 of the following:

13 (1) ~~The addition to a motor vehicle of required or optional~~
14 ~~equipment pursuant to state or federal law.~~

15 (2) ~~Revaluation of the United States dollar in the case of a~~
16 ~~foreign-make vehicle.~~

17 (i) ~~To fail to pay to a dealer, within a reasonable time following~~
18 ~~receipt of a valid claim by a dealer thereof, a payment agreed to~~
19 ~~be made by the manufacturer or distributor to the dealer by reason~~
20 ~~of the fact that a new vehicle of a prior year model is in the dealer's~~
21 ~~inventory at the time of introduction of new model vehicles.~~

22 (j) ~~To deny the widow, widower, or heirs designated by a~~
23 ~~deceased owner of a dealership the opportunity to participate in~~
24 ~~the ownership of the dealership or successor dealership under a~~
25 ~~valid franchise for a reasonable time after the death of the owner.~~

26 (k) ~~To offer refunds or other types of inducements to a person~~
27 ~~for the purchase of new motor vehicles of a certain line-make to~~
28 ~~be sold to the state or a political subdivision of the state without~~
29 ~~making the same offer to all other dealers in the same line-make~~
30 ~~within the relevant market area.~~

31 (l) ~~To modify, replace, enter into, relocate, terminate, or refuse~~
32 ~~to renew a franchise in violation of Article 4 (commencing with~~
33 ~~Section 3060) of Chapter 6 of Division 2.~~

34 (m) ~~To employ a person as a representative who has not been~~
35 ~~licensed pursuant to Article 3 (commencing with Section 11900)~~
36 ~~of Chapter 4 of Division 5.~~

37 (n) ~~To deny a dealer the right of free association with another~~
38 ~~dealer for a lawful purpose.~~

1 ~~(o) (1) To compete with a dealer in the same line-make~~
2 ~~operating under an agreement or franchise from a manufacturer~~
3 ~~or distributor in the relevant market area.~~

4 ~~(2) A manufacturer, branch, or distributor or an entity that~~
5 ~~controls or is controlled by, a manufacturer, branch, or distributor,~~
6 ~~shall not, however, be deemed to be competing in the following~~
7 ~~limited circumstances:~~

8 ~~(A) Owning or operating a dealership for a temporary period,~~
9 ~~not to exceed one year at the location of a former dealership of the~~
10 ~~same line-make that has been out of operation for less than six~~
11 ~~months. However, after a showing of good cause by a~~
12 ~~manufacturer, branch, or distributor that it needs additional time~~
13 ~~to operate a dealership in preparation for sale to a successor~~
14 ~~independent franchisee, the board may extend the time period.~~

15 ~~(B) Owning an interest in a dealer as part of a bona fide dealer~~
16 ~~development program that satisfies all of the following~~
17 ~~requirements:~~

18 ~~(i) The sole purpose of the program is to make franchises~~
19 ~~available to persons lacking capital, training, business experience,~~
20 ~~or other qualities ordinarily required of prospective franchisees~~
21 ~~and the dealer development candidate is an individual who is~~
22 ~~unable to acquire the franchise without assistance of the program.~~

23 ~~(ii) The dealer development candidate has made a significant~~
24 ~~investment subject to loss in the franchised business of the dealer.~~

25 ~~(iii) The program requires the dealer development candidate to~~
26 ~~manage the day-to-day operations and business affairs of the dealer~~
27 ~~and to acquire, within a reasonable time and on reasonable terms~~
28 ~~and conditions, beneficial ownership and control of a majority~~
29 ~~interest in the dealer and disassociation of any direct or indirect~~
30 ~~ownership or control by the manufacturer, branch, or distributor.~~

31 ~~(C) Owning a wholly owned subsidiary corporation of a~~
32 ~~distributor that sells motor vehicles at retail, if, for at least three~~
33 ~~years prior to January 1, 1973, the subsidiary corporation has been~~
34 ~~a wholly owned subsidiary of the distributor and engaged in the~~
35 ~~sale of vehicles at retail.~~

36 ~~(3) (A) A manufacturer, branch, and distributor that owns or~~
37 ~~operates a dealership in the manner described in subparagraph (A)~~
38 ~~of paragraph (2) shall give written notice to the board, within 10~~
39 ~~days, each time it commences or terminates operation of a~~

1 dealership and each time it acquires, changes, or divests itself of
2 an ownership interest.

3 (B) A manufacturer, branch, and distributor that owns an interest
4 in a dealer in the manner described in subparagraph (B) of
5 paragraph (2) shall give written notice to the board, annually, of
6 the name and location of each dealer in which it has an ownership
7 interest, the name of the bona fide dealer development owner or
8 owners, and the ownership interests of each owner expressed as a
9 percentage.

10 (p) To unfairly discriminate among its franchisees with respect
11 to warranty reimbursement or authority granted to its franchisees
12 to make warranty adjustments with retail customers.

13 (q) To sell vehicles to a person not licensed pursuant to this
14 chapter for resale.

15 (r) To fail to affix an identification number to a park trailer, as
16 described in Section 18009.3 of the Health and Safety Code, that
17 is manufactured on or after January 1, 1987, and that does not
18 clearly identify the unit as a park trailer to the department. The
19 configuration of the identification number shall be approved by
20 the department.

21 (s) To dishonor a warranty, rebate, or other incentive offered
22 to the public or a dealer in connection with the retail sale of a new
23 motor vehicle, based solely upon the fact that an autobroker
24 arranged or negotiated the sale. This subdivision shall not prohibit
25 the disallowance of that rebate or incentive if the purchaser or
26 dealer is ineligible to receive the rebate or incentive pursuant to
27 any other term or condition of a rebate or incentive program.

28 (t) To exercise a right of first refusal or other right requiring a
29 franchisee or an owner of the franchise to sell, transfer, or assign
30 to the franchisor, or to a nominee of the franchisor, all or a material
31 part of the franchised business or of the assets of the franchised
32 business unless all of the following requirements are met:

33 (1) The franchise authorizes the franchisor to exercise a right
34 of first refusal to acquire the franchised business or assets of the
35 franchised business in the event of a proposed sale, transfer, or
36 assignment.

37 (2) The franchisor gives written notice of its exercise of the
38 right of first refusal no later than 45 days after the franchisor
39 receives all of the information required pursuant to subparagraph
40 (A) of paragraph (2) of subdivision (d).

1 ~~(3) The sale, transfer, or assignment being proposed relates to~~
2 ~~not less than all or substantially all of the assets of the franchised~~
3 ~~business or to a controlling interest in the franchised business.~~

4 ~~(4) The proposed transferee is neither a family member of an~~
5 ~~owner of the franchised business, nor a managerial employee of~~
6 ~~the franchisee owning 15 percent or more of the franchised~~
7 ~~business, nor a corporation, partnership, or other legal entity owned~~
8 ~~by the existing owners of the franchised business. For purposes of~~
9 ~~this paragraph, a “family member” means the spouse of an owner~~
10 ~~of the franchised business, the child, grandchild, brother, sister,~~
11 ~~or parent of an owner, or a spouse of one of those family members.~~
12 ~~This paragraph does not limit the rights of the franchisor to~~
13 ~~disapprove a proposed transferee as provided in subdivision (d).~~

14 ~~(5) Upon the franchisor’s exercise of the right of first refusal,~~
15 ~~the consideration paid by the franchisor to the franchisee and~~
16 ~~owners of the franchised business shall equal or exceed all~~
17 ~~consideration that each of them were to have received under the~~
18 ~~terms of, or in connection with, the proposed sale, assignment, or~~
19 ~~transfer, and the franchisor shall comply with all the terms and~~
20 ~~conditions of the agreement or agreements to sell, transfer, or~~
21 ~~assign the franchised business.~~

22 ~~(6) The franchisor shall reimburse the proposed transferee for~~
23 ~~expenses paid or incurred by the proposed transferee in evaluating,~~
24 ~~investigating, and negotiating the proposed transfer to the extent~~
25 ~~those expenses do not exceed the usual, customary, and reasonable~~
26 ~~fees charged for similar work done in the area in which the~~
27 ~~franchised business is located. These expenses include, but are not~~
28 ~~limited to, legal and accounting expenses, and expenses incurred~~
29 ~~for title reports and environmental or other investigations of real~~
30 ~~property on which the franchisee’s operations are conducted. The~~
31 ~~proposed transferee shall provide the franchisor a written~~
32 ~~itemization of those expenses, and a copy of all nonprivileged~~
33 ~~reports and studies for which expenses were incurred, if any, within~~
34 ~~30 days of the proposed transferee’s receipt of a written request~~
35 ~~from the franchisor for that accounting. The franchisor shall make~~
36 ~~payment within 30 days of exercising the right of first refusal.~~

37 ~~(u) (1) To unfairly discriminate in favor of a dealership owned~~
38 ~~or controlled, in whole or in part, by a manufacturer or distributor~~
39 ~~or an entity that controls or is controlled by the manufacturer or~~

1 distributor. Unfair discrimination includes, but is not limited to,
2 the following:

3 (A) The furnishing to a franchisee or dealer that is owned or
4 controlled, in whole or in part, by a manufacturer, branch, or
5 distributor of any of the following:

6 (i) A vehicle that is not made available to each franchisee
7 pursuant to a reasonable allocation formula that is applied
8 uniformly, and a part or accessory that is not made available to all
9 franchisees on an equal basis when there is no reasonable allocation
10 formula that is applied uniformly.

11 (ii) A vehicle, part, or accessory that is not made available to
12 each franchisee on comparable delivery terms, including the time
13 of delivery after the placement of an order. Differences in delivery
14 terms due to geographic distances or other factors beyond the
15 control of the manufacturer, branch, or distributor shall not
16 constitute unfair competition.

17 (iii) Information obtained from a franchisee by the manufacturer,
18 branch, or distributor concerning the business affairs or operations
19 of a franchisee in which the manufacturer, branch, or distributor
20 does not have an ownership interest. The information includes,
21 but is not limited to, information contained in financial statements
22 and operating reports, the name, address, or other personal
23 information or buying, leasing, or service behavior of a dealer
24 customer, and other information that, if provided to a franchisee
25 or dealer owned or controlled by a manufacturer or distributor,
26 would give that franchisee or dealer a competitive advantage. This
27 clause does not apply if the information is provided pursuant to a
28 subpoena or court order, or to aggregated information made
29 available to all franchisees.

30 (iv) Sales or service incentives, discounts, or promotional
31 programs that are not made available to all California franchises
32 of the same line-make on an equal basis.

33 (B) Referring a prospective purchaser or lessee to a dealer in
34 which a manufacturer, branch, or distributor has an ownership
35 interest, unless the prospective purchaser or lessee resides in the
36 area of responsibility assigned to that dealer or the prospective
37 purchaser or lessee requests to be referred to that dealer.

38 (2) This subdivision does not prohibit a franchisor from granting
39 a franchise to prospective franchisees or assisting those franchisees
40 during the course of the franchise relationship as part of a program

1 or programs to make franchises available to persons lacking capital,
2 training, business experience, or other qualifications ordinarily
3 required of prospective franchisees.

4 (v) (1) To access, modify, or extract information from a
5 confidential dealer computer record, as defined in Section
6 11713.25, without obtaining the prior written consent of the dealer
7 and without maintaining administrative, technical, and physical
8 safeguards to protect the security, confidentiality, and integrity of
9 the information.

10 (2) Paragraph (1) does not limit a duty that a dealer may have
11 to safeguard the security and privacy of records maintained by the
12 dealer.

13 (w) (1) To use electronic, contractual, or other means to prevent
14 or interfere with any of the following:

15 (A) The lawful efforts of a dealer to comply with federal and
16 state data security and privacy laws.

17 (B) The ability of a dealer to do either of the following:

18 (i) Ensure that specific data accessed from the dealer's computer
19 system is within the scope of consent specified in subdivision (v).

20 (ii) Monitor specific data accessed from or written to the dealer's
21 computer system.

22 (2) Paragraph (1) does not limit a duty that a dealer may have
23 to safeguard the security and privacy of records maintained by the
24 dealer.

25 (x) (1) To unfairly discriminate against a franchisee selling a
26 service contract, debt cancellation agreement, maintenance
27 agreement, or similar product not approved, endorsed, sponsored,
28 or offered by the manufacturer, manufacturer branch, distributor,
29 or distributor branch or affiliate. For purposes of this subdivision,
30 unfair discrimination includes, but is not limited to, any of the
31 following:

32 (A) Express or implied statements that the dealer is under an
33 obligation to exclusively sell or offer to sell service contracts, debt
34 cancellation agreements, or similar products approved, endorsed,
35 sponsored, or offered by the manufacturer, manufacturer branch,
36 distributor, or distributor branch or affiliate.

37 (B) Express or implied statements that selling or offering to sell
38 service contracts, debt cancellation agreements, maintenance
39 agreements, or similar products not approved, endorsed, sponsored,
40 or offered by the manufacturer, manufacturer branch, distributor,

1 or distributor branch or affiliate, or the failure to sell or offer to
2 sell service contracts, debt cancellation agreements, maintenance
3 agreements, or similar products approved, endorsed, sponsored,
4 or offered by the manufacturer, manufacturer branch, distributor,
5 or distributor branch or affiliate will have any negative
6 consequences for the dealer.

7 (C) Measuring a dealer's performance under a franchise
8 agreement based upon the sale of service contracts, debt
9 cancellation agreements, or similar products approved, endorsed,
10 sponsored, or offered by the manufacturer, manufacturer branch,
11 distributor, or distributor branch or affiliate.

12 (D) Requiring a dealer to actively promote the sale of service
13 contracts, debt cancellation agreements, or similar products
14 approved, endorsed, sponsored, or offered by the manufacturer,
15 manufacturer branch, distributor, or distributor branch or affiliate.

16 (E) Conditioning access to vehicles or parts, or vehicle sales or
17 service incentives upon the sale of service contracts, debt
18 cancellation agreements, or similar products approved, endorsed,
19 sponsored, or offered by the manufacturer, manufacturer branch,
20 distributor, or distributor branch or affiliate.

21 (2) Unfair discrimination does not include, and nothing shall
22 prohibit a manufacturer from, offering an incentive program to
23 vehicle dealers who voluntarily sell or offer to sell service
24 contracts, debt cancellation agreements, or similar products
25 approved, endorsed, sponsored, or offered by the manufacturer,
26 manufacturer branch, distributor, or distributor branch or affiliate,
27 if the program does not provide vehicle sales or service incentives.

28 (3) This subdivision does not prohibit a manufacturer,
29 manufacturer branch, distributor, or distributor branch from
30 requiring a franchisee that sells a used vehicle as "certified" under
31 a certified used vehicle program established by the manufacturer,
32 manufacturer branch, distributor, or distributor branch to provide
33 a service contract approved, endorsed, sponsored, or offered by
34 the manufacturer, manufacturer branch, distributor, or distributor
35 branch.

36 (4) Unfair discrimination does not include, and nothing shall
37 prohibit a franchisor from requiring a franchisee to provide, the
38 following notice prior to the sale of the service contract if the
39 service contract is not provided or backed by the franchisor and
40 the vehicle is of the franchised line-make:

1 -
2
3
4
5
6
7
8
9

“Service Contract Disclosure

The service contract you are purchasing is not provided or backed by the manufacturer of the vehicle you are purchasing. The manufacturer of the vehicle is not responsible for claims or repairs under this service contract.

Signature of Purchaser²²

(y) To take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer’s intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. If the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the dealer did not have reason to know of the customer’s intent to export or resell the vehicle.

(z) For purposes of this section, the term “area of responsibility” means a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee’s performance of its sales and service obligations.

(aa) Commencing July 1, 2016, to unfairly discriminate among its franchisees with respect to reimbursement or authority granted to its franchisees pursuant to subdivision (c) or (d) of Section 11760.

SEC. 2. Section 3065 of the Vehicle Code is amended to read:
3065. (a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed to the franchisee

1 for the warranty diagnostics, repair, ~~and~~ servicing, and all other
2 conditions of the ~~obligation~~. *obligation, including all costs*
3 *associated with the disposal of hazardous materials that are*
4 *associated with a recall.* The reasonableness of the warranty
5 reimbursement schedule or formula shall be determined by the
6 board if a franchisee files a protest with the board. A franchisor
7 shall not replace, modify, or supplement the warranty
8 reimbursement schedule to impose a fixed percentage or other
9 reduction in the time and compensation allowed to the franchisee
10 for warranty repairs not attributable to a specific repair. A
11 franchisor may reduce the allowed time and compensation
12 applicable to a specific warranty repair only upon 15 days' prior
13 written notice to the franchisee. Any protest challenging a reduction
14 in time and compensation applicable to specific parts or labor
15 operations shall be filed within six months following the
16 franchisee's receipt of notice of the reduction, and the franchisor
17 shall have the burden of establishing the reasonableness of the
18 reduction and adequacy and fairness of the resulting compensation.

19 (b) In determining the adequacy and fairness of the
20 compensation, the franchisee's effective labor rate charged to its
21 various retail customers may be considered together with other
22 relevant criteria. If in a protest permitted by this section filed by
23 any franchisee the board determines that the warranty
24 reimbursement schedule or formula fails to provide adequate and
25 fair compensation or fails to conform with the other requirements
26 of this section, within 30 days after receipt of the board's order,
27 the franchisor shall correct the failure by amending or replacing
28 the warranty reimbursement schedule or formula and implementing
29 the correction as to all franchisees of the franchisor that are located
30 in this state.

31 (c) If any franchisor disallows a franchisee's claim for a
32 defective part, alleging that the part, in fact, is not defective, the
33 franchisor shall return the part alleged not to be defective to the
34 franchisee at the expense of the franchisor, or the franchisee shall
35 be reimbursed for the franchisee's cost of the part, at the
36 franchisor's option.

37 (d) (1) All claims made by franchisees pursuant to this section
38 shall be either approved or disapproved within 30 days after their
39 receipt by the franchisor. Any claim not specifically disapproved
40 in writing within 30 days from receipt by the franchisor shall be

1 deemed approved on the 30th day. All claims made by franchisees
2 under this section and Section 3064 for labor and parts shall be
3 paid within 30 days after approval.

4 (2) A franchisor shall not disapprove a claim unless the claim
5 is false or fraudulent, repairs were not properly made, repairs were
6 inappropriate to correct a nonconformity with the written warranty
7 due to an improper act or omission of the franchisee, or for material
8 noncompliance with reasonable and nondiscriminatory
9 documentation and administrative claims submission requirements.

10 (3) When any claim is disapproved, the franchisee who submits
11 it shall be notified in writing of its disapproval within the required
12 period, and each notice shall state the specific grounds upon which
13 the disapproval is based. The franchisor shall provide for a
14 reasonable appeal process allowing the franchisee at least 30 days
15 after receipt of the written disapproval notice to provide additional
16 supporting documentation or information rebutting the disapproval.
17 If disapproval is based upon noncompliance with documentation
18 or administrative claims submission requirements, the franchisor
19 shall allow the franchisee at least 30 days from the date of receipt
20 of the notice to cure any material noncompliance. If the disapproval
21 is rebutted, and material noncompliance is cured before the
22 applicable deadline, the franchisor shall approve the claim.

23 (4) If the franchisee provides additional supporting
24 documentation or information purporting to rebut the disapproval,
25 attempts to cure noncompliance relating to the claim, or otherwise
26 appeals denial of the claim and the franchisor continues to deny
27 the claim, the franchisor shall provide the franchisee with a written
28 notification of the final denial within 30 days of completion of the
29 appeal process, which shall conspicuously state “Final Denial” on
30 the first page.

31 (5) Failure to approve or pay within the above specified time
32 limits, in individual instances for reasons beyond the reasonable
33 control of the franchisor, shall not constitute a violation of this
34 article.

35 (6) Within six months after either receipt of the written notice
36 described in paragraph (3) or (4), whichever is later, a franchisee
37 may file a protest with the board for determination of whether the
38 franchisor complied with the requirements of this subdivision. In
39 any protest pursuant to this subdivision, the franchisor shall have
40 the burden of proof.

1 (e) (1) Audits of franchisee warranty records may be conducted
2 by the franchisor on a reasonable basis for a period of nine months
3 after a claim is paid or credit issued. A franchisor shall not select
4 a franchisee for an audit, or perform an audit, in a punitive,
5 retaliatory, or unfairly discriminatory manner. A franchisor may
6 conduct no more than one random audit of a franchisee in a
7 nine-month period. The franchisor's notification to the franchisee
8 of any additional audit within a nine-month period shall be
9 accompanied by written disclosure of the basis for that additional
10 audit.

11 (2) Previously approved claims shall not be disapproved or
12 charged back to the franchisee unless the claim is false or
13 fraudulent, repairs were not properly made, repairs were
14 inappropriate to correct a nonconformity with the written warranty
15 due to an improper act or omission of the franchisee, or for material
16 noncompliance with reasonable and nondiscriminatory
17 documentation and administrative claims submission requirements.
18 A franchisor shall not disapprove or chargeback a claim based
19 upon an extrapolation from a sample of claims, unless the sample
20 of claims is selected randomly and the extrapolation is performed
21 in a reasonable and statistically valid manner.

22 (3) If the franchisor disapproves of a previously approved claim
23 following an audit, the franchisor shall provide to the franchisee,
24 within 30 days after the audit, a written disapproval notice stating
25 the specific grounds upon which the claim is disapproved. The
26 franchisor shall provide a reasonable appeal process allowing the
27 franchisee a reasonable period of not less than 30 days after receipt
28 of the written disapproval notice to respond to any disapproval
29 with additional supporting documentation or information rebutting
30 the disapproval and to cure noncompliance, with the period to be
31 commensurate with the volume of claims under consideration. If
32 the franchisee rebuts any disapproval and cures any material
33 noncompliance relating to a claim before the applicable deadline,
34 the franchisor shall not chargeback the franchisee for that claim.

35 (4) If the franchisee provides additional supporting
36 documentation or information purporting to rebut the disapproval,
37 attempts to cure noncompliance relating to the claim, or otherwise
38 appeals denial of the claim and the franchisor continues to deny
39 the claim, the franchisor shall provide the franchisee with a written
40 notification of the final denial within 30 days of completion of the

1 appeal process, which shall conspicuously state “Final Denial” on
2 the first page.

3 (5) The franchisor shall not chargeback the franchisee until 45
4 days after receipt of the written notice described in paragraph (3)
5 or paragraph (4), whichever is later. Any chargeback to a franchisee
6 for warranty parts or service compensation shall be made within
7 90 days of receipt of that written notice. If the franchisee files a
8 protest pursuant to this subdivision prior to the franchisor’s
9 chargeback for denied claims, the franchisor shall not offset or
10 otherwise undertake to collect the chargeback until the board issues
11 a final order on the protest. If the board sustains the chargeback
12 or the protest is dismissed, the franchisor shall have 90 days
13 following issuance of the final order or the dismissal to make the
14 chargeback, unless otherwise provided in a settlement agreement.

15 (6) Within six months after either receipt of the written
16 disapproval notice or completion of the franchisor’s appeal process,
17 whichever is later, a franchisee may file a protest with the board
18 for determination of whether the franchisor complied with this
19 subdivision. In any protest pursuant to this subdivision, the
20 franchisor shall have the burden of proof.

21 (f) If a false claim was submitted by a franchisee with the intent
22 to defraud the franchisor, a longer period for audit and any resulting
23 chargeback may be permitted if the franchisor obtains an order
24 from the board.

25 (g) *For purposes of this section, “warranty” includes a recall*
26 *conducted pursuant to Sections 30118 to 30120, inclusive, of Title*
27 *49 of the United States Code. This subdivision is declaratory and*
28 *not amendatory of existing law.*

29 *SEC. 3. Section 11713.18 of the Vehicle Code is amended to*
30 *read:*

31 11713.18. (a) It is a violation of this code for the holder of
32 any dealer’s license issued under this article to advertise for sale
33 or sell a used vehicle as “certified” or use any similar descriptive
34 term in the advertisement or the sale of a used vehicle that implies
35 the vehicle has been certified to meet the terms of a used vehicle
36 certification program if any of the following apply:

37 (1) The dealer knows or should have known that the odometer
38 on the vehicle does not indicate actual mileage, has been rolled
39 back or otherwise altered to show fewer miles, or replaced with
40 an odometer showing fewer miles than actually driven.

1 (2) The dealer knows or should have known that the vehicle
2 was reacquired by the vehicle’s manufacturer or a dealer pursuant
3 to state or federal warranty laws.

4 (3) The title to the vehicle has been inscribed with the notation
5 “Lemon Law Buyback,” “manufacturer repurchase,” “salvage,”
6 “junk,” “nonrepairable,” “flood,” or similar title designation
7 required by this state or another state.

8 (4) The vehicle has sustained damage in an impact, fire, or flood,
9 that after repair prior to sale substantially impairs the use or safety
10 of the vehicle.

11 (5) The dealer knows or should have known that the vehicle has
12 sustained frame damage.

13 (6) Prior to sale, the dealer fails to provide the buyer with a
14 completed inspection report indicating all the components
15 inspected.

16 (7) The dealer disclaims any warranties of merchantability on
17 the vehicle.

18 (8) The vehicle is sold “AS IS.”

19 (9) The term “certified” or any similar descriptive term is used
20 in any manner that is untrue or misleading or that would cause any
21 advertisement to be in violation of subdivision (a) of Section 11713
22 of this code or Section 17200 or 17500 of the Business and
23 Professions Code.

24 (10) *The vehicle is subject to an unremedied manufacturer’s*
25 *recall described in a recall database report required by Section*
26 *11756.*

27 (b) A violation of this section is actionable under the Consumers
28 Legal Remedies Act (Title 1.5 (commencing with Section 1750)
29 of Part 4 of Division 3 of the Civil Code), the Unfair Competition
30 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
31 Division 7 of the Business and Professions Code), Section 17500
32 of the Business and Professions Code, or any other applicable state
33 or federal law. The rights and remedies provided by this section
34 are cumulative and shall not be construed as restricting any right
35 or remedy that is otherwise available.

36 (c) This section does not abrogate or limit any disclosure
37 obligation imposed by any other law.

38 (d) This section does not apply to the advertisement or sale of
39 a used motorcycle or a used off-highway motor vehicle subject to
40 identification under Section 38010.

1 ~~SEC. 7.~~

2 *SEC. 4.* Article 1.1 (commencing with Section 11750) is added
3 to Chapter 4 of Division 5 of the Vehicle Code, to read:

4

5 Article 1.1. Consumer Automotive Recall Safety Act

6

7 11750. This article shall be known, and may be cited, as the
8 Consumer Automotive Recall Safety Act (CARS Act).

9 11752. As used in this article, the following definitions apply:

10 (a) The term “dealer” has the same meaning as in Section 285.

11 (b) (1) A “manufacturer’s recall” is a recall conducted pursuant
12 to Sections 30118 to 30120, inclusive, of Title 49 of the United
13 States ~~Code, the National Highway Traffic and Motor Vehicle~~
14 ~~Safety Act (49 U.S.C. Sec. 30101, et seq.).~~ *Code.*

15 (2) A manufacturer’s recall does not include a service campaign
16 or emission recall when the vehicle manufacturer or the National
17 Highway Traffic Safety Administration has not issued a recall
18 notice to owners of affected vehicles, pursuant to Section 30118
19 of Title 49 of the United States ~~Code, the National Highway Traffic~~
20 ~~and Motor Vehicle Safety Act (49 U.S.C. Sec. 30101, et seq.).~~ A
21 ~~manufacturer’s recall does not include a Stop Sale — Stop Drive~~
22 ~~recall.~~ *Code.*

23 ~~(e) The term “new motor vehicle dealer” has the same meaning~~
24 ~~as in Section 426.~~

25 ~~(d)~~

26 (c) A “recall database” is a database from which an individual
27 may obtain vehicle identification number (VIN) specific ~~Stop Sale~~
28 ~~— Stop Drive recall~~ and manufacturer’s recall information relevant
29 to a specific vehicle.

30 (1) For a vehicle manufacturer that is not subject to the
31 regulations adopted pursuant to Section 31301 of the federal
32 Moving Ahead for Progress in the 21st Century Act (Public Law
33 112-141), a recall database is one of the following:

34 (A) The recall data on a vehicle manufacturer’s Internet Web
35 site for a specific vehicle’s line-make.

36 (B) The recall data in a vehicle manufacturer’s internal system
37 that provides information to its franchisees on vehicles subject to
38 recall.

39 (C) The recall data in subparagraph (A) or (B) that is contained
40 in a commercially available vehicle history system.

1 (2) For a vehicle manufacturer that is subject to the regulations
2 adopted pursuant to Section 31301 of the federal Moving Ahead
3 for Progress in the 21st Century Act (Public Law 112-141), a recall
4 database shall include, at a minimum, the recall information
5 required pursuant to Section 573.15 of Title 49 of the Code of
6 Federal Regulations.

7 (e)

8 (d) A “recall database report” is a report, specific to a vehicle
9 that is identified by its VIN, containing information obtained from
10 a recall database.

11 (f)

12 (e) A “rental car company” is a person or entity in the business
13 of renting passenger vehicles to the public in California.

14 (f) *The term “used vehicle” has the same meaning as set forth*
15 *in Section 665.*

16 ~~(g) A “Stop Sale – Stop Drive recall” is a recall notice provided~~
17 ~~to owners of affected vehicles, pursuant to Sections 30118 to~~
18 ~~30120, inclusive, of Title 49 of the United States Code, the National~~
19 ~~Highway Traffic and Motor Vehicle Safety Act (49 U.S.C. Sec.~~
20 ~~30101, et seq.), when the vehicle manufacturer or the National~~
21 ~~Highway Traffic Safety Administration informs the dealer to stop~~
22 ~~the sale of the vehicle or contains any precaution advice to the~~
23 ~~owner to stop operating the vehicle.~~

24 ~~(h) A “vehicle manufacturer” is a person who manufactures,~~
25 ~~assembles, or distributes new motor vehicles, sold or leased, that~~
26 ~~are subject to registration under this code.~~

27 ~~11754. (a) A dealer shall not display or offer for sale at retail~~
28 ~~a used vehicle, as defined in Section 665, that is subject to~~
29 ~~registration under this code, unless the dealer has obtained a recall~~
30 ~~database report within 30 days of the display or offer.~~

31 ~~(b) If a recall database report obtained by a dealer indicates that~~
32 ~~a used vehicle is subject to a Stop Sale – Stop Drive recall, the~~
33 ~~dealer shall not sell or lease that vehicle at retail until the recall~~
34 ~~repair has been made.~~

35 ~~(c) If a recall database report obtained by a dealer indicates that~~
36 ~~a used vehicle is subject to a manufacturer’s recall and the used~~
37 ~~vehicle is of the same line-make as the franchise of the new motor~~
38 ~~vehicle dealer, the dealer shall not sell or lease that vehicle at retail~~
39 ~~until the recall repair has been made.~~

1 (d) If a recall database report obtained by a dealer indicates that
2 a used vehicle is subject to a manufacturer's recall and the used
3 vehicle is not of the same line-make as the franchise of the new
4 motor vehicle dealer or the dealer does not have a franchise, the
5 dealer may sell or lease the vehicle at retail if all of the following
6 are satisfied:

7 (1) The dealer discloses the manufacturer's recall by providing
8 a copy of the recall database report to the consumer prior to sale
9 or lease.

10 (2) The consumer signs the disclosure acknowledging that the
11 vehicle has a manufacturer's recall and that the consumer can get
12 the recall repaired at no cost to the consumer at a new motor vehicle
13 dealer of the vehicle's line-make.

14 (e) To comply with subdivision (d), and notwithstanding Section
15 2981.9 of the Civil Code, a recall database report, that indicates
16 the vehicle is subject to a manufacturer's recall and the recall repair
17 has not been made, shall be disclosed and the disclosure signed
18 by the consumer in a document separate from the conditional sales
19 contract or other vehicle purchase agreement.

20 (f) The disclosure by a dealer, and receipt and acknowledgment
21 by the consumer, of the information specified in subdivisions (d)
22 and (e) has no legal effect other than to demonstrate compliance
23 by the dealer with the requirements prescribed in those
24 subdivisions. Nothing in this article shall be interpreted to place
25 consumers in a less advantageous legal position for having received
26 or signed the disclosures provided pursuant to this article than if
27 no disclosure had been made.

28 11756. (a) No later than 48 hours after receiving a notice of a
29 recall conducted pursuant to Sections 30118 to 30120, inclusive,
30 of Title 49 of the United States Code, the National Highway Traffic
31 and Motor Vehicle Safety Act (49 U.S.C. Sec. 30101, et seq.), or
32 sooner if practicable, a rental car company is prohibited from
33 renting or offering for rent any vehicle subject to that recall.

34 (b) If a recall notification indicates that the remedy for the recall
35 is not immediately available and specifies actions to temporarily
36 repair the vehicle in a manner to eliminate the safety risk that
37 prompted the recall, the rental car company, after having the repairs
38 completed, may rent the vehicle. Once the remedy for the rental
39 vehicle becomes available to the rental car company, the rental

1 car company may not rent the vehicle until the vehicle has been
2 repaired.

3 11758. Commencing July 1, 2016, or as soon thereafter as the
4 department exhausts its supply of existing certificate of ownership
5 forms, the department shall include the following recall disclosure
6 statement on the certificate of ownership and bill of sale form for
7 private transactions:

8
9 “This vehicle may have an unrepaired manufacturer’s recall.
10 Please ask the seller if there is an unrepaired manufacturer’s recall
11 on this vehicle. You can check for any recalls and how to get the
12 recall repaired at the National Highway Traffic Safety
13 Administration’s website.”

14 11760. (a) A vehicle manufacturer shall clearly and
15 conspicuously display on its Internet Web site and in all recall
16 notifications pursuant to Section 30118 of Title 49 of the United
17 States Code, the National Highway Traffic and Motor Vehicle
18 Safety Act (49 U.S.C. Sec. 30101, et seq.), whether a vehicle is
19 subject to a Stop Sale — Stop Drive recall.

20 (b) When a consumer seeks to repair a vehicle subject to a Stop
21 Sale — Stop Drive recall or manufacturer’s recall as identified in
22 a recall database report and the parts or procedures for the repair
23 are not yet available, the vehicle manufacturer shall, upon request
24 by the consumer, provide a rental or loaner vehicle to the consumer
25 at no cost to the consumer until the recall repair has been made.
26 The consumer shall not be provided with a rental or loaner vehicle
27 that is subject to a Stop Sale — Stop Drive recall or a manufacturer’s
28 recall.

29 (c) If a vehicle manufacturer requires a franchisee to provide a
30 rental or loaner vehicle to a consumer under subdivision (b), the
31 vehicle manufacturer shall adequately and fairly compensate the
32 franchisee for all costs incurred in providing a loaner or rental
33 vehicle to a consumer. For purposes of this paragraph, adequate
34 and fair compensation shall be the average daily rental amount
35 of _____ dollars (\$_____) for each day a consumer uses a loaner or
36 rental vehicle.

37 (d) A vehicle manufacturer shall adequately and fairly
38 compensate each of its franchisees for all costs incurred in storing
39 vehicles with a Stop Sale — Stop Drive recall or manufacturer’s
40 recall in the franchisee’s possession if the parts or procedures are

1 not yet available to repair the recall of the vehicle. For purposes
2 of this paragraph, adequate and fair compensation shall be the
3 average daily amount of _____ dollars (\$_____) for each day a
4 vehicle subject to a Stop Sale — Stop Drive recall or manufacturer's
5 recall is in the franchisee's possession, the parts or procedures are
6 not yet available to repair the recall of the vehicle, and the recall
7 repair has not been made.

8 11762. (a) This article shall not create any legal duty upon the
9 dealer, franchisee, rental car company, or private seller related to
10 the accuracy, errors, or omissions contained in a recall database
11 report or any legal duty to provide information added to a recall
12 database after the dealer, franchisee, rental car company, or private
13 seller obtained the recall database report pursuant to Sections
14 11754, 11756, and 11758. Nothing in this article shall affect any
15 legal rights, claims, or remedies otherwise available under law.

16 (b) The provisions of this article are severable. If any provision
17 of this article or its application is held invalid, that invalidity shall
18 not affect other provisions or applications that can be given effect
19 without the invalid provision or application.

20 (c) This article does not apply to the sale of a recreational
21 vehicle, a motorcycle, an off-highway motor vehicle subject to
22 identification under Section 38010, a vehicle sold by a dismantler
23 after being reported for dismantling pursuant to Section 11520, or
24 a vehicle sold by a salvage pool after obtaining a salvage pool
25 certificate pursuant to Section 11515 or a nonrepairable vehicle
26 certificate issued pursuant to Section 11515.2.

27 (d) This article shall become operative on July 1, 2016.

28 11754. (a) *No later than 48 hours after receiving a notice of*
29 *a manufacturer's recall, or sooner if practicable, a dealer or rental*
30 *car company shall not loan, rent, or offer for loan or rent a vehicle*
31 *subject to that recall until the recall repair has been made.*

32 (b) *If a recall notification indicates that the remedy for the recall*
33 *is not immediately available and specifies actions to temporarily*
34 *repair the vehicle in a manner to eliminate the safety risk that*
35 *prompted the recall, the dealer or rental car company, after having*
36 *the repairs completed, may loan or rent the vehicle. Once the*
37 *remedy for the vehicle becomes available to the dealer or rental*
38 *car company, the dealer or rental car company shall not loan or*
39 *rent the vehicle until the vehicle has been repaired.*

1 11756. (a) For every used vehicle advertised for sale as
2 “certified” or any similar descriptive term in the advertisement
3 or the sale of a used vehicle that implies the vehicle has been
4 certified to meet the terms of a used vehicle certification program,
5 a dealer shall obtain a recall database report within 30 days of
6 the display or offer.

7 (b) If a recall database report obtained by a dealer indicates
8 that a used vehicle is subject to a manufacturer’s recall, the dealer
9 shall not advertise for sale or sell that vehicle as “certified” or
10 use any similar descriptive term in the advertisement or the sale
11 of the used vehicle that implies the vehicle has been certified to
12 meet the terms of a used vehicle certification program until the
13 recall repair has been made.

14 11758. (a) Before mailing a notice of registration renewal to
15 the registered owner of a vehicle, pursuant to Section 1661, the
16 department shall obtain a recall database report for that vehicle.
17 If the recall database report indicates that the vehicle is subject
18 to a manufacturer’s recall, the department shall notify the
19 registered owner by checking the box next to the recall disclosure
20 statement specified in subdivision (b).

21 (b) The department shall include the following recall disclosure
22 statement on the notice of registration renewal for a vehicle subject
23 to a manufacturer’s recall:

24 “This vehicle has an unrepaired manufacturer’s recall. You can
25 get this recall repaired for free. You can check for any recalls and
26 how to get the recall repaired at the National Highway Traffic
27 Safety Administration’s Internet Web site.”

28 (c) This section shall become operative on the date that the
29 Director of Motor Vehicles executes a declaration, to be retained
30 by the director, in which the director certifies that the department
31 has appropriate access to the necessary data within a recall
32 database and available funding to include a recall disclosure
33 statement on the notice of registration renewal for a vehicle subject
34 to a manufacturer’s recall. The director shall post the declaration
35 on the department’s Internet Web site and shall send the
36 declaration to the appropriate committees of the Legislature and
37 to the Legislative Counsel.

38 11760. This article shall not create any legal duty upon the
39 dealer, rental car company, or department related to the accuracy,
40 errors, or omissions contained in a recall database report or any

1 legal duty to provide information added to a recall database after
2 the dealer, rental car company, or department obtained the recall
3 database report pursuant to Sections 11754, 11756, and 11758.

4 11761. This article does not apply to the sale of a recreational
5 vehicle, a motorcycle, an off-highway motor vehicle subject to
6 identification under Section 38010, a vehicle sold by a dismantler
7 after being reported for dismantling pursuant to Section 11520,
8 or a vehicle sold by a salvage pool after obtaining a salvage pool
9 certificate pursuant to Section 11515 or a nonrepairable vehicle
10 certificate issued pursuant to Section 11515.2.

11 11762. The provisions of this article are severable. If any
12 provision of this article or its application is held invalid, that
13 invalidity shall not affect other provisions or applications that can
14 be given effect without the invalid provision or application.

15 11763. Except as otherwise provided in Section 11758, this
16 article shall become operative on July 1, 2017.

17 ~~SEC. 8.~~

18 SEC. 5. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.